

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUBEN ANTONIO BANUELOS,

Petitioner,

No. CIV S-04-0234 WBS KJM P

vs.

M. YARBOROUGH, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely¹ filed a notice of appeal of this court's March 1, 2005 dismissal of his application for a writ of habeas corpus for failure to exhaust state remedies. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

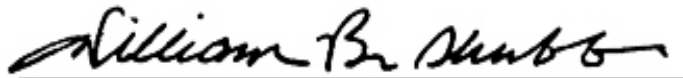
A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

¹ On March 23, 2005, the Magistrate Judge granted petitioner's request for an extension of time in which to file his notice of appeal.

1 Where, as here, the petition was dismissed on procedural grounds, a certificate of
2 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
3 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of
4 reason would find it debatable whether the petition states a valid claim of the denial of a
5 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
6 McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).

7 After a review of the record in this case IT IS HEREBY ORDERED that a
8 certificate of appealability issue on the question of whether petitioner is entitled to equitable
9 tolling.

10 DATED: April 20, 2005

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13 WILLIAM B. SHUBB
14 UNITED STATES DISTRICT JUDGE

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